IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1915 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

INDIRA B DOSHI

Appearance:

1. First Appeal No. 1915 of 1994

MR JC SHETH for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

..... for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 18/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE N.G.NANDI)

1. Heard Mr.J C Sheth learned advocate for the

appellant and Mr.A R Thakkar for Mr.J R Nanavati learned advocate for the respondents.

2. This appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") is filed against the judgment and decree dated 27/12/1993 passed in Special Civil Suit No.167 of 1981 by the learned 3rd Joint Civil Judge (S.D.), Rajkot awarding compensation of Rs.2,46,500/- with 12 percent interest and the cost of the suit to the widow and the minor daughter of deceased Bharat Nanalal Doshi who died in the railway accident which took place on 27/10/1980 between Kashipura Sarar and Miyangam - Karjan Stations (Vadodara District).

3. Facts leading to the filing of the present appeal shortly stated are that Bharat Nanalal Doshi on 26/10/1980 boarded 6 UP Saurashtra Mail from Rajkot Junction for going to Bombay Central. That the said railway train met with an accident in the early hours of 27/10/1980 between the railway stations mentioned above. Bharat Nanalal Doshi who was travelling by the said railway train died as a result of the said railway accident. The widow and minor daughter filed suit claiming damages from the railway administration. The defendant railway administration filed return statement and refuted the claim of the plaintiffs contending that the incident was just an accident and railway administration is not negligent in the occurrence of the incident wherein Bharat Nanalal Doshi lost his life.

4. The learned trial Judge framed issues vide Ex.27. Appreciating the oral as well as the documentary evidence, the learned trial Judge decreed the suit by awarding compensation of Rs.2,46,500/- with 12 percent interest and the cost of the suit. It is this decree which is assailed in the present appeal by the appellant Union of India.

5. We have heard the submissions advanced by Mr.J C Sheth learned advocate for the appellant. It is submitted by Mr.Sheth that in the present appeal, the impugned judgment and decree are assailed on the grounds of want of jurisdiction of the Civil Court to try and decide the suit and also on the ground of multiplier of 24 years purchase factor adopted by the trial Court in computing the loss of income. We have also heard the submissions advanced by Mr.A R Thakkar learned advocate for the respondents. We have appreciated the evidence adduced in the trial Court.

6. On going through the records and proceedings of the case, we find that it is not disputed that Bharat Nanalal Doshi on 26/10/1980 boarded 6 UP Saurashtra Mail from Rajkot Junction for going to Bombay. It is also not disputed that 6 UP Saurashtra Mail met with an accident on 27/10/1980 between Kashipura Sarar and Miyangam Karjan Railway Stations between Vadodara and Bombay (Western Railway). It is also an admitted position that in the said accident Bharat Nanalal Doshi died on the spot in the railway compartment.

7. With the enactment of The Railway Claims Tribunal Act, 1987 the Railway Claims Tribunal came to be established to exercise the jurisdiction, powers and authority conferred on it by or under the Act.

7.1 Section 15 of the Act contains Bar of Jurisdiction and provides that on and from the appointed day, no Court or other authority shall have or be entitled to exercise any jurisdiction, powers or authority in relation to the matters referred to in sub-sections (1) and 1(A) of Section 13.

7.2 Section 13(1) - Jurisdiction, powers and authority of Claims Tribunal : "The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil court or a Claims Commissioner appointed under the provisions of the Railways Act-

(a) relating to the responsibility of the railway administration as carriers under Chapter VII of the Railways Act in respect of claims for-

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carrriage by railway;

(ii) compensation payable under Sectiion 82-A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway".

Section 13(1-A) : "The Claims Tribunal shall also exercise, on and from the date of commencement of the provisions of Section 124-A of the Railways Act, 1989, all such jurisdiction powers and authority as were exercisable immediately before that date by any civil court in respect of claims for compensation now payable by the railway administration under Section 124-A of the said Act or the rules made thereunder".

7.3 Section 24 of the Act deals with the Transfer of Pending Cases. It provides as under;

Section 24 : Transfer of pending cases.-

(1) Every suit, claim or other legal proceeding (other than an appeal) pending before any Court, Claims Commissioner or other authority immediately before the appointed day, [or, as the case may be, the date of commencement of the provisions of sub-section (1A) of Section 13], being a suit, claim or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the appointed day, [or, as the case may be, the date of commencement of the provisions of sub-section (1A) of Section 13], within the jurisdiction of the Claims Tribunal shall stand transferred on [that day or, as the case may be, date] to the Claims Tribunal.

(2) Where any suit, claim or other legal proceeding stands transferred from any Court, Claims Commissioner or other authority to the Claims Tribunal under sub-section (1),-

(a) the Court, Claims Commissioner or other authority shall, as soon as may be after such transfer, forward the records of such suit, claim or other legal proceeding to the Claims Tribunal;

(b) the Claims Tribunal may, on receipt of such records, proceed to deal with such suit, claim or other legal proceeding, so far as may be, in the same manner as an application from the stage which was reached before such transfer or from any earlier stage or de novo as the Claims Tribunal may deem fit."

7.4 Section 82(A) of the Indian Railways Act dealing with the liability of railway administration provides that the railway

administration would be liable in respect of accidents to trains carrying passengers.

8. In view of the above referred provisions of the Act, we find considerable force in the submission of Mr.Sheth that the Civil Court could not have, after the establishment of the Railway Claims Tribunal, tried the suit for damages on account of the death of a passenger. In view of the provisions of Section 24 of the Act, all suits pending before the Civil Court claiming damages on account of the death of a passenger in a railway accident, would be required to be transferred to the Railway Claims Tribunal. In the instant case, that has not been done and the suit remained with the Civil Court and came to be partly decreed as pointed out above.

9. Under the provisions of Order 7 Rule 10 of the Code, ordinarily the plaint would be liable to be returned for presentation to the proper Court or the Civil Court would be directed to transfer the suit to the Railway Claims Tribunal, in view of the provisions referred to above. It may be appreciated that in the instant case, the accident took place on 27/10/1980 and the suit came to be filed on 22/10/1981 i.e. within 1 year of the accident and the part decree came to be passed on 27/12/1993 i.e. after 12 years of the institution of the suit. This First Appeal is being heard today at the fag end of year 2003 i.e. after more than 23 years of the accident. Keeping all these in view, especially the period of 23 years that has elapsed between the date of the accident and the hearing of this appeal, we are of the view that directing return of the plaint for presentation to the proper Court or requiring the transfer of the suit to the Railway Claims Tribunal for decision, would work enormous hardship to the plaintiffs, who are the widow and the minor daughter of the deceased passenger, since they would be required to adduce the evidence afresh before the Railway Claims Tribunal and one does not know when the claim would come to be decided by the Claims Tribunal and thereafter, if required, appeal by the either side. Considering all these and keeping in view the hardship that may be caused to the plaintiffs, without making any further observations on the question of lack of jurisdiction of the Civil Court, we take the things as they are and the impugned decree/judgment as it is and decide this appeal on the other contention raised by Mr.Sheth.

10. The record of the trial Court suggests that the Certificate Ex.62 dated 07/05/1952 relating to the birth date of deceased Bharat Nanalal Doshi issued by the

Principal, School No.3, Jedhpur, suggests that Bharat Nanalal Doshi then studying in Seventh standard, has birth date as 09/04/1947, meaning thereby, that on the date of the accident deceased Bharat Nanalal Doshi was aged 33 years 6 months and 17 days (Ex.62). In the instant case, the Tribunal has applied the multiplier of 24 years purchase factor. We find considerable force in the submission of Mr.Sheth that the multiplier adopted by the trial Court is on a much higher side. In our opinion, considering the age of deceased Bharat Nanalal Doshi as 33 years 6 months and 17 days on the date of the accident, the proper purchase factor that could have been adopted would be 16 years purchase factor and the computation of the amount awardable to the plaintiffs would be required to be sliced down to that extent, which would come to Rs.1,60,000/- instead of Rs.2,40,000/- awarded by the trial court, adopting the multiplier of 24 years purchase factor.

11. In the impugned judgment, the learned trial Judge has awarded 9 percent interest on the amount of compensation payable to the plaintiffs. In view of the settled legal position, in compensation cases the rate of interest awardable would be 9 percent and the impugned decree is liable to be interfered with on the score of grant of rate of interest by the trial court. Thus, the interest that would be payable to the respondents claimants/plaintiffs would be 9 percent from the date of the suit till the realization of the amount instead of 12% awarded by the trial Court. On reappreciation of evidence, we do not regard interference called for on the other amounts awarded by the trial court and therefore, the appeal is required to be partly allowed to the extent pointed out above.

12. In the result, the appeal is partly allowed. The trial Court decree is modified to the extent that the respondents (plaintiffs) would be entitled to Rs.1,60,000/- (One lakh sixty thousand) plus Rs.6,500/- (Six thousand five hundred) i.e. in all Rs.1,66,500/- (One lakh sixty six thousand five hundred) with proportionate cost at 9 percent interest from the date of the suit. The amount of Rs.1,26,500/- (One lakh twenty six thousand five hundred) deposited by the appellant, pursuant to the order dated 19/09/1994 and invested with nationalized bank, will now be payable to the respondents appeal stands disposed of accordingly. No cost.

(N. G. Nandi, J.)

(D. P. Buch, J.)

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